

Gall v. Steele
15BA-CV02046

**Consolidated Findings of Fact,
Conclusions of Law and Judgment**

The parties having argued all pending motions for summary judgment and having stipulated and agreed that this cause is ripe for final disposition without the necessity of further pleading, evidence or argument, this Court enters the following Consolidated Findings of Fact, Conclusions of Law and Judgment:

It is this Court's opinion that in the first instance, pursuant to 483.245 RSMO, a duly elected circuit clerk is the appointing authority for her or his clerks, that is, vested with hire and fire power, for that circuit clerk's clerks. As an aside, it may be that such a circuit clerk can delegate their appointing authority power to someone else but such issue is not before this Court.

In order to understand this conclusion, several analyses are required, via an interweaving of a statutory analysis and a constitutional analysis.

Since 1945, the Missouri Constitution, Article V, Section 4, has provided that the Supreme Court has general superintending control over all courts and tribunals.

In 1976, the Missouri Constitution was amended and the following provision, Article V, Section 15.4, was added:

“Personnel to aid in the business of the circuit court shall be selected as provided by law.”

Sandwiched between the 1945 Constitution and the 1976 revision was the Missouri Supreme Court case of *State Ex Rel. Geers v. Lasky*, 449 S.W.2d 598 (Mo. 1970). In *Geers*, the Supreme Court held invalid a local court rule that provided for the appointment or removal of a deputy clerk with the approval of a judge. The Court held that the local rule was not authorized by Missouri statute. The Court noted that while the then-483.141 RSMO afforded the judge the duty to supervise the clerk's appointing of deputies, that this duty was merely to "see to it that the clerk accomplish the end result," and not to "supervise the detailed manner in which the clerk performs his various duties." *Id.* at 600. Further, the Court held that the local rule was not authorized by the circuit court's inherent power, as this power was limited to instances in which it is "reasonably necessary to preserve the court's existence and protect it in the orderly administration of its business." *Id.* at 601.

Although there was no reference in *Geers* to any provision of the Missouri Constitution, the Supreme Court was aware of the "superintending" provision of Article V, Section 4 of the Missouri Constitution and that if it had application to the *Geers* case that the Supreme Court would have made such reference.

Further supporting this analysis, in *Geers*, *the Court* said:

"We find no authority, inherent or otherwise, for a circuit court to assume that type of control over the conduct of the office of the circuit clerk."

Continuing the analysis and as previously noted, the 1976 revision added that "(p)ersonnel to aid in the business of the

circuit court shall be selected *as provided by law* . . . (emphasis added).”

Though the parties debate the meaning of the exception “*as provided by law*,” this Court finds no great debate: it simply requires reference and analysis to existing statutory law, the Constitution and the common law. See generally *Wann v. Reorganized School District No. 6 of St. Francois County*, 293 S.W.2d 408, 411 (Mo. 1956).

Having already analyzed the applicability of the existing statutory law, the Constitution and the common law, the analysis returns to the controlling statutory law: a duly elected circuit clerk is the appointing authority, that is, vested with hire and fire power, for that circuit clerk’s clerks, 483.245 RSMO.

This analysis would not be complete without consideration of the Adair County consolidation agreement, Judge Steele’s actions and the Supreme Court’s administrative order published by Chief Justice Price on October 8, 2009 (the “2009 Judge Price Order”).

On March 20, 2008, the Judges of the Adair County Circuit Court and the duly elected Clerk entered into a consolidation agreement (the “2008 Consolidation Agreement”), providing, among other things, that the Clerk was the appointing authority for the Clerk’s clerks. This Court assumes that this agreement was voluntarily struck at the prior prompting of the Supreme Court as suggested by the introductory comments of Chief Judge Price in the 2009 Judge Price Order (“For several years, the Judiciary has facilitated . . . consolidation . . . in those counties volunteering to do so . . . the Court is appreciative of those counties that have participated in this program”).

The 2008 Consolidation Agreement provided that the Circuit Clerk was the appointing authority for the Clerk's clerks and, in the event of a dispute, the same would be resolved by the action of a majority of the Court en banc. It should be noted that the terms of the 2008 Consolidation Agreement as to consolidation were in exact accord with the ultimate analysis of this Court in this opinion: a duly elected circuit clerk is the appointing authority, that is, vested with hire and fire power, for that circuit clerk's clerks.

On October 8, 2009, Chief Judge Price issued the 2009 Judge Price Order. Said order directed the consolidation of "all deputy clerks and division clerks under the supervision of one appointing authority" However, the order was only applicable to the circuit courts that had "not previously consolidated": Adair County had previously consolidated pursuant to the 2008 Consolidation Agreement. Therefore, the 2009 Judge Price Order did not apply to Adair County.

Any suggestion that the 2009 Judge Price Order was supportive of any action taken by the Circuit Court of Adair County is without merit.

Continuing, it is important to consider, here, just "to whom" the 2009 Judge Price Order might apply.

When doing so, this Court is assuming (and in no way suggests otherwise) that when the Supreme Court issues an order that it knows the law. It knew of the provisions of the 1945 Constitution, *Geers*, the 1976 Constitution and the statutory vesting of appointing authority in elected Circuit Clerks, 483.245 RSMO.

Further, this Court assumes that for the purposes of this analysis that this Court is only concerned with the legal efficacy of the 2009 Judge Price Order regarding the designation of an appointing authority for clerk hiring and firing. Interestingly, in that regard, in the 2009 Judge Price Order, there is no mention whatsoever of the hiring and firing power of an appointing authority – only the supervision of clerks, custody of records and related matters are mentioned.

In Missouri, there are 2 classes of clerks, elected and appointed.

If elected, that portion of the 2009 Judge Price Order to designate an appointing authority could not prospectively apply to them as they were statutorily vested with such authority, 485.245 RSMO (unless, of course, they consented to the same as referenced in the opening paragraph of this opinion). Further, there is no suggestion in the 2009 Judge Price Order that it applies to duly elected circuit clerks.

If they were appointed and had previously entered into a voluntary consolidation agreement, the 2009 Judge Price Order would not apply to them.

If they were appointed and had not previously entered into a consolidation agreement, the 2009 Judge Price Order would have applied to them.

Adair County had both an elected Circuit Clerk and had previously entered a consolidation agreement: the 2009 Judge Price Order did not apply to Adair County.

Notwithstanding the fact that the 2009 Judge Price Order did not apply to Adair County because, among other reasons,

Adair County had previously entered into a consolidation agreement, subsequent to the 2009 Judge Price Order, Judge Steele, on May 2, 2013, endeavored to unilaterally modify the 2008 Consolidation Agreement.

In that regard, the 2008 Consolidation Agreement contained a modification clause. It provided that in the event of a dispute, a majority vote of the Court en banc could modify it. Whether or not a dispute existed is unclear to this Court but such issue is not controlling. Assuming a dispute did exist, Judge Steele's first procedural attempt at modification was defective and, in turn, unsuccessful: he conducted an email meeting which did not include all of the members of the Court en banc. Although it appears that the Judiciary's Budget Committee approved the amendment, this Court interprets said action as a housekeeping event and that the Budget Committee's action serves no precedential value.

Then, in addition, in April, 2014, a proper meeting of the Adair Circuit Court en banc was held finding that Judge Steele's May 2, 2013, action was void. The Adair Circuit Court en banc then appointed Associate Circuit Judge Swaim as the appointing authority for the Clerk's clerks. Said order was invalid based upon the analysis contained within this opinion: a duly elected circuit clerk is the appointing authority, that is, vested with hire and fire power, for that circuit clerk's clerks.

Judge Steele's May 2, 2013 attempt at declaring himself as the appointing authority for the Clerk's clerks was ineffective for two reasons: first, the attempt was procedurally defective; and second, even if it had been procedurally proper, Judge Steele had no right to unilaterally take away the Clerk's statutorily granted appointing authority without her consent. Likewise, the Court en banc's attempt to

appoint Judge Swaim as the appointing authority for the Clerk's clerks was ineffective: the Court en banc had no right to unilaterally take away the Clerk's statutorily granted appointing authority without her consent.

It is the judgment of this Court that Linda Decker is the duly elected Circuit Clerk of Adair County, Missouri. As such, she is vested with sole appointing authority for her clerks. Such authority did not change when, in 2008, the 2008 Consolidation Agreement was entered. Such authority did not change when, in 2013, Judge Steele conducted his failed attempt at modifying the voluntary consolidation agreement, nor would it have changed if Judge Steele had complied with the modification procedures outlined in the 2008 Consolidation Agreement (as the courts cannot usurp the appointing authority of an elected Circuit Clerk). Finally, such authority did not change when, in 2014, the Adair Court en banc held void Judge Steele's 2013 action and thereafter appointed Judge Swaim as the appointing authority (as the courts cannot usurp the appointing authority of an elected Circuit Clerk).

Dated: January 13, 2016.



COURT SEAL OF

Honorable Gary Oxenhandler, Division 19



BOONE COUNTY